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February 24, 2012

VIA ELECTRONIC FILING
Ms. Jocelyn Boyd
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, South Carolina 29210

Re: Frontier Access Service Tariff – ("FAS Tariff")
Frontier Facilities for Intrastate Access Tariff ("FFIA Tariff")
Docket No. 2012-54-C

Dear Mrs. Boyd:

This letter responds to the letter of Frontier Communications of the Carolinas Inc. ("Frontier"), filed on February 22, 2012. Frontier urges the Commission to reject Verizon's request to order Frontier to refile its revisions to the above-referenced tariffs to conform to the VoIP-PSTN intercarrier compensation regime the FCC established in its November 18, 2011 Order reforming the intercarrier compensation and universal service support systems.[1] That regime applies interstate switched access rates to non-local VoIP-PSTN traffic. As Verizon pointed out in its earlier letter,[2] Frontier's tariff revisions violate the FCC's Order because they do not apply the FCC's VoIP-PSTN compensation regime to *all* VoIP-PSTN traffic, as ordered by the FCC, but rather only to VoIP-PSTN traffic that originates as VoIP and terminates on the PSTN. Frontier claims that the FCC's Further Notice of Proposed Rulemaking, which includes the question of the transition that will apply to originating access charges, "would necessarily include the access charges associated with calls that originate on the PSTN and terminate in VoIP." (Frontier letter at 2.) Frontier, therefore, concludes that it may assess intrastate access charges on this VoIP-PSTN traffic. If the Commission adopts Frontier's position, Frontier would charge intrastate originating access rates on VoIP-PSTN traffic while enjoying the benefit of paying lower interstate rates when it buys originating access from

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[1] *See In re: Connect America Fund, etc.*, Report & Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Nov. 18, 2011) ("FCC Order").
[2] Letter from John M.S. Hoefer to Jocelyn Boyd dated January 25, 2012.

Verizon and the other carriers that have correctly implemented the FCC's regime for *all* VoIP-PSTN traffic.

The FCC explicitly rejected the asymmetrical compensation approach reflected in Frontier's tariffs. The FCC "decline[d] to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or only IP-terminated traffic," as some commenters had proposed. (FCC Order, ¶ 942; *see also* ¶ 948.) The FCC cited arbitrage concerns relating to asymmetric payments on VoIP traffic, concluding that "[a]n approach that addressed only IP-originated traffic would perpetuate—and expand—such concerns." *Id.* Yet Frontier now urges the Commission to sanction just such an approach by approving a tariff that applies the FCC's regime to *only* IP-originated traffic—as well as to accept the notion that the pre-existing intrastate access regime applies to IP-terminated traffic.

The Commission cannot do so. The FCC expressly decided *not* to apply the pre-existing access regime to any VoIP-PSTN traffic, whether IP-originated or IP-terminated. As the FCC concluded, "subject[ing] VoIP traffic to the pre-existing intercarrier compensation regime that applies in the context of traditional telephone service, including full interstate and intrastate access charges...would require the Commission to enunciate a policy rationale for expressly imposing that regime on VoIP-PSTN traffic in the face of the known flaws of existing intercarrier compensation rules and notwithstanding the recognized need to move in a different direction." (FCC Order, ¶ 948.)

Frontier makes the fundamental mistake of disregarding the FCC's specific intercarrier compensation framework for VoIP-PSTN traffic, which is distinct from its plan for reforming intercarrier compensation for traditional traffic[3]. Frontier all but ignores Section XIV of the FCC Order, "Intercarrier Compensation for VoIP Traffic," as well as new Rule 51.913 itself, which leave no doubt that the FCC's VoIP-PSTN compensation regime applies to *all* VoIP-PSTN traffic, including traffic terminating in VoIP, and that the pre-existing intrastate access regime does *not* apply to any VoIP-PSTN traffic. In fact, in a number of states, Frontier first filed tariffs correctly applying the FCC regime to all VoIP-PSTN traffic, before revising those tariffs to take the current, incorrect approach it takes in its tariff here.

The FCC's Rule 51.913 ("Transition for VoIP-PSTN traffic") (FCC Order App. A) requires the application of interstate switched access rates to traffic exchanged between carriers in Time Division Multiplexing ("TDM") format "that originates and/or terminates in IP format." Indeed, Frontier's own tariff revisions define VoIP-PSTN traffic the same way the FCC's Rule does (FAS Tariff § 2.3.13 (A)(1); FFIA Tariff § 2.3.16 (A)(1))—as traffic exchanged "in time division multiplexing ("TDM") format that originates and/or terminates in Internet protocol ("IP") format"—despite the tariff's failure to apply the interstate rates to traffic terminated in IP format, as the Rule requires.

[3] FCC Order, section XIV, "Intercarrier Compensation for VoIP Traffic."

Again and again, the text of the FCC's Order makes clear that its VoIP-PSTN compensation regime includes *both* IP-terminating *and* IP-originating traffic. (*See, e.g.*, FCC Order, ¶ 940, *quoting* Joint Letter of U.S. Telecom Ass'n, AT&T, Fairpoint Comm., Frontier, Verizon, Windstream, OPASTCO & Western Telecomm. Alliance (filed July 29, 2011 in FCC Docket Nos. 01-92 etc. ("'VoIP-PSTN traffic' is 'traffic exchanged over PSTN facilities that originates and/or terminates in IP format.'"); ¶ 941 (explicitly including "VoIP services that are originated or terminated on the PSTN, such as 'one-way' services that allow end-users either to place calls to, or receive calls from, the PSTN"); ¶ 956 n. 1952 (referring to "IP-originated or IP-terminated VoIP traffic"); ¶ 961 ("toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates" [footnote omitted]); ¶ 963 observing that "information the terminating LEC has about VoIP customers it is serving: can be used to identify traffic subject to the VoIP-PSTN compensation regime); ¶ 969 (the VoIP-PSTN framework includes "origination and termination charges").

Frontier incorrectly claims that "[t]here has never been any dispute about originating access charges that terminate on VoIP," and complains that "Verizon's" (that is, the *FCC's*) approach will create such disputes because "Frontier would be forced to rely on another carrier's specific percentage of VoIP-terminated traffic." (Frontier Letter at 2.) This claim makes no sense. Frontier's own tariff relies on the other carrier to report its percentage of VoIP-originated traffic, so there is no reason to believe that a carrier's self-reported VoIP termination factor would raise any greater concerns about factor inflation than a VoIP origination factor would—particularly when both factors will likely rely on the same information (that is, information the LEC has about the VoIP customers it serves; *see, e.g.*, FCC Order, ¶ 963). And the FCC expected carriers to include factor audit provisions in their tariffs, which Frontier has, in fact, done, and which have long been routine in the industry in other contexts (such as PIU factors). (*See* FCC Order, ¶ 963.)

In addition, while most industry disputes about payment of VoIP-PSTN compensation may have involved terminating, rather than originating, charges, these disputes nevertheless involved PSTN-originating/VoIP-terminating traffic (*e.g.*, disputes between a PSTN carrier and a cable company or its wholesale LEC partner), the same kind of traffic Frontier attempts to except from application of the FCC regime in its tariff. The urgent need to stanch such billing disputes and litigation arising from "the lack of clarity regarding the intercarrier compensation obligations for VoIP traffic," FCC Order, ¶ 937, led the FCC to establish a VoIP-PSTN compensation regime apart from the transitional framework for traditional access traffic (and which, unlike the transition plan for traditional traffic, *never* applies intrastate access to VoIP traffic). This clarification was urgently necessary to "minimize future uncertainly and disputes regarding VoIP compensation, and thereby meaningfully reduce carriers' future costs." FCC Order, ¶ 935. Frontier's refusal to apply the FCC's VoIP compensation regime, as intended, to PSTN-originating/VoIP-terminating traffic will put the industry right back where it was before the FCC Order—that is, embroiled in disputes about compensation for VoIP-PSTN traffic.

Just this week the Public Staff of the North Carolina Utilities Commission recommended that Frontier be required to modify its switched access service tariff as Verizon had requested. Public Staff's recommendation was included in the North Carolina Commission's February 20, 2012 Staff Conference Agenda, a copy of which is enclosed.

Frontier's tariff revisions do not correctly implement the FCC's VoIP-PSTN compensation regime, and would result in the very "marketplace distortions" that the FCC designed its prospective VoIP intercarrier compensation regime to prevent. FCC Order, ¶ 948. The Commission should order Frontier to revise and refile its tariffs to reflect application of interstate switched access rates to *all* PSTN-VoIP traffic, including PSTN-originating/VoIP-terminating traffic.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

s/John M.S. Hoefer

John M. S. Hoefer

JMSH/srw

cc: Ms. Afton Ellison
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